

**RULES OF THE DISTRICT COURT
OF THE TWELFTH JUDICIAL DISTRICT**

EFFECTIVE JANUARY 26, 1996

(Including Amendments)

These rules for the district court of the 12th Judicial District shall become effective upon approval by the Supreme Court and publication in the Nebraska Advance Sheets. They shall supplement the Uniform District Court Rules of Practice and Procedure as adopted by the Nebraska Supreme Court.

Adopted effective January 26, 1996.

RULE 12-0

ANNUAL TERM OF COURT

The regular term of the court in each county shall be deemed to commence on January 1 of each calendar year, and shall be deemed to conclude on December 31 of the same calendar year. No order opening or closing such term shall be required.

Adopted effective January 26, 1996.

RULE 12-1

CORRESPONDENCE WITH THE COURT

All correspondence with the court regarding pending litigation shall refer to the subject case by case title, number, and county, and a copy of such correspondence shall be mailed to opposing counsel. If the correspondence necessitates the court's transmittal of papers, preaddressed stamped envelopes shall be enclosed.

Adopted effective January 26, 1996.

RULE 12-2

STIPULATIONS WITH OR AMONG COUNSEL

No stipulations of counsel shall be binding unless made in writing or upon the official record.

Adopted effective January 26, 1996.

RULE 12-3

MOTION CALENDARS

A. **Maintenance and Notice of the Motion Calendar.** In Scotts Bluff County, when any motion requiring a hearing is filed, it should contain a notice of hearing with a date, time, manner of hearing, and certificate of service; it shall be served by personal delivery or mail on all other parties to the case. A time of hearing is secured by contacting the office of the judge responsible for the case. If it is impossible to secure a time for hearing, the motion may be filed, but notice of hearing must be furnished promptly thereafter. Failure to secure and serve notice of a date for hearing within 10 days after filing a motion will be deemed an abandonment of the motion.

In all other counties within the district, the clerk or bailiff shall maintain a motion calendar for each judge assigned to a case plainly designating:

- (1) The case name and number,
- (2) Attorneys or pro se parties who have appeared in the case,
- (3) A description of the motion to be heard, and
- (4) A space for the time and manner of hearing.

The calendar shall be kept conspicuously posted in the office of the clerk or judge. It shall be mailed to attorneys, pro se parties, court reporters, and judges of the court at least four days before each motion day. Posting and mailing is sufficient notice of hearing where no different method of service is required by statute. If no valid appearance has been made for an adverse party, responsibility for giving notice of hearing to that party shall be upon the movant.

B. **Items Placed on the Motion Calendar.**

- (1) Motions include all requests for an order of the court. The calendar shall include appeals, arraignments, applications for fees, applications for relief pendente lite, ex parte requests, hearings stipulated by counsel, and motions for summary judgment.
- (2) Applications for **temporary relief in domestic relations cases** shall be calendared for hearing on the motion day three days after filing. All other motion calendar items shall be heard on the first calendar that is scheduled ten days after filing.
- (3) Hearings on motions for **summary judgment** shall be on the motion calendar scheduled at least ten days after its service on an adverse party.

(4) **Appeals** shall be placed on the next motion calendar after the bill of exceptions is filed in district court, where such a demand is made, otherwise the appeal shall be placed on the next motion calendar after the transcript is filed. Upon submission, the court will identify the record to be reviewed and consider times for submitting briefs and making oral arguments.

C. **Submission of Motions.** If oral argument is waived or the moving party fails to appear for a motion calendar item, the matter shall be considered submitted. Failure to furnish and serve a brief is not considered a confession of the party's position. If briefs are furnished and served, it should be done at least three days before the hearing.

D. **Motions by Telephone.**

(1) **Request for Telephone Conference Hearing:**

(a) No matter will be heard by telephone unless all parties consent to such telephonically held hearing. A party who arranges for a telephone conference will be considered to have certified that such party has obtained the prior consent of all parties who are required to or desire to participate in the hearing.

(b) Telephone conferences requested by the moving party shall be arranged prior to the filing of the motion, and the notice of hearing shall clearly state that the hearing will be held by telephone conference call. Telephone conferences requested by a party other than the moving party shall be arranged at least three (3) days prior to the hearing, and notice shall be filed by the party requesting the hearing, together with proof of service. Documentary evidence in support of or opposition to the motion shall be submitted to the court in advance of the hearing with copies to other counsel.

(2) **Not Available When Nonwaivable Verbatim Record Involved:**

Although in all instances a written journal entry of the decision of the court shall be made, no verbatim record will be made of any telephonically held hearing, except by specific permission of the court, which will be granted when capability exists. Without such permission, no such hearing may be scheduled for any proceeding requiring a nonwaivable verbatim record under the provisions of Neb. Ct. R. Of Prac. 5A(1) (rev. 2000).

(3) **Waiver of Other Record:** Any party consenting to a telephonic hearing shall be deemed to have waived the verbatim record required only upon request under the provisions of Neb. Ct. R. Of Prac. 5A(2) (rev. 2000). Conducting the hearing shall constitute the waiver of such optional verbatim record by the court.

(4) **Initiation of Telephone Conference Call:** The party requesting the telephone conference call shall be responsible for:

(a) arranging the time for the conference call, with the clerk if scheduled for a motion day and with the judge if scheduled otherwise;

(b) notifying all other parties who will participate in the conference call;

(c) initiating the call promptly at the time scheduled and providing for all expenses of the call.

(d) utilizing appropriate equipment and systems to assure that all persons participating have adequate sound quality and volume. If the court determines that the sound quality or volume is insufficient, the court may require the party initiating the call to utilize other means to complete the hearing by telephone.

E. **Journalizing the Results of a Motion.** The party who prevails on a matter is responsible to prepare a proper journal entry describing its submission and/or result, and serve copies on all other parties. In criminal cases journalizing shall always be the responsibility of the County Attorney.

F. **Time for Pleading Over.** When a special appearance is overruled, or a motion or demurrer is ruled upon, the party required to plead further shall be allowed 10 days to further plead or 20 days to answer, unless given another time by the court.

G. **Continuance or Additional Time to Plead.** In addition to the requirements set forth in Neb. Rev. Stat. § 25-1148, a motion for continuance shall set forth whether the opposing party has any objection to the continuance. All continuances shall be to a date certain stated in the order granting it. No order granting a continuance shall be made ex parte. Motions for continuance that lack agreement must be set for hearing.

Adopted effective January 26, 1996; amended effective November 21, 1997; Rule 12-3C amended effective January 24, 2002.

RULE 12-4

CHILD CUSTODY DECREES

A. **Leaving the State.** Every order for child custody, temporary or permanent, shall contain language substantially as follows:

A party exercising custody of a minor child is ordered not to move the child outside the state of Nebraska. Anyone intending such a move must first:

- a. Make written application to the court, including proposed changes in the visitation schedule and costs of transportation;
- b. Give notice of the application and hearing to the other party; and
- c. Establish that the move is in the child's best interests.

B. Supplemental Child Custody Orders. In all cases where custody of children is ordered, the "Supplemental Decree For Custody," obtainable from the clerk of court, shall be attached to and made a part of the final custody order.

Adopted effective January 26, 1996.

RULE 12-5

JURY TRIALS

A. Availability of Counsel During Jury Deliberations. Counsel will be available on short notice personally or by telephone, as ordered by the court, during jury deliberations in the event of a verdict or a question by the jury. The clerk or bailiff should be kept informed of where counsel will be at all times when the jury is deliberating, unless excused by the court.

B. Absence of Counsel on Receipt of Verdict. In civil cases the court will not deem it necessary that any party or any counsel be present or represented when the jury returns to the courtroom with its verdict.

C. Presence of Defendant in Criminal Cases. Unless otherwise ordered by the court, during jury deliberations all defendants in criminal cases shall remain in the building in which trial is held.

Adopted effective January 26, 1996.

RULE 12-6

DISCOVERY

A. Interrogatories or requests for admission shall have sufficient space below the interrogatory or request for the responding party to answer. Answers to interrogatories or requests for admission shall be typed with the answers following the question. If there is insufficient space, the responding party shall retype the full question and answer.

B. Requests for relief under the Nebraska Discovery Rules must be accompanied by a certificate by the moving party that sincere efforts have been made by personal

consultation to resolve the difference. The statements shall also recite the date, time, and place of the conference and the names of those participating.

Adopted effective January 26, 1996.

RULE 12-7

EXHIBITS

A. **Documentary Exhibits.** All documentary evidence which is not impeaching or rebuttal in nature shall be presented to the court reporter prior to trial or hearing, marked for identification, and exhibited to opposing counsel for inspection. They shall be numbered consecutively.

B. **Public Records as Exhibits.** In all cases where books, files or records, or parts thereof, belonging to or taken from the records of public offices are offered in evidence or are marked for identification to be offered at a pretrial conference, the party offering the same shall furnish copies to the court reporter before the offer. An affidavit from the court file may be removed from the court file and offered in evidence if a judge authorizes its removal.

Adopted effective January 26, 1996.

RULE 12-8

REMOVAL OF COURT FILES

Attorneys and bonded abstracters may check out transcripts, bills of exceptions, and court files from the clerk's office for not more than 5 days. Before removal, a receipt shall be signed and left with the clerk. If the item is not returned within 5 days, or sooner if ordered by the court, the clerk, by written notice, shall warn that checkout privileges will be suspended unless such item is immediately returned. Upon failure to return, the clerk is directed by the court to suspend the checkout privileges of the involved person until the court restores the privilege.

Any person may obtain photocopies of any public filings at such reasonable cost as the clerk shall determine.

Adopted effective January 26, 1996.

RULE 12-9

LAW LIBRARIES

No books are to be removed from the county law libraries unless signed for in the office of the clerk of the district court or other custodian or a signed withdrawal slip is placed in the bookshelf where the book is removed. All books signed for must be returned to the library within one week from the date taken. All books used in the libraries must be returned to their proper place in the bookcase on the same day such books are used. The Bar Association of each county shall select one or more of its members who shall be empowered to advise and consult with the court on matters pertaining to library maintenance and regulation for that county. Additional library rules may be ordered by a district judge and conspicuously posted in the applicable office of the clerk of the district court and in the library.

Adopted effective January 26, 1996.

RULE 12-10

Rules For Box Butte, Dawes, Grant, Morrill, Sheridan and Sioux Counties

A. **Trial Sessions.** Trials will be held beginning the first Monday in:

Box Butte County:	February, May, August & November.
Dawes County:	April, August & December.
Grant County:	As necessary.
Morrill County:	March, June, September & October
Sheridan County:	March, July & November.
Sioux County:	As necessary.

Trial hours are from 9:00 A.M. to noon, and 1:30 to 4:30 P.M.

B. **Trial Calendars and Scheduling.**

The clerk of court in each county will keep, in the order of their filing, three lists of cases scheduled for trial at the next session: the first for criminal jury trials, the second for civil jury trial, and the third for trials to the court. Cases are entitled to be tried and pre-tried in that order. Criminal cases and civil nonjury cases may be exempted by order of the court from pre-trial rules.

Cases are entitled to be tried in the order of their appearance on the calendars. Where possible, cases will be set for a date certain at pre-trial or at the motion day before the term begins. Otherwise, counsel must observe the assignment of cases on the schedule,

keep informed of the progress of trials and, as cases are reached, appear and proceed with trial.

Plea agreements and jury trial waivers in criminal cases will not be accepted after the last motion day preceding the trial session, except for good cause shown.

C. **Pre-trial Conference Scheduling.** Unless otherwise specially set, pre-trial conferences for all cases will be held the Monday three weeks before the appropriate trial session.

D. **Motion Days.** Motion days will be held each month, as follows:

Box Butte County:	Second and fourth Tuesday at 9:30 a.m.
Dawes County:	First and Third Tuesday at 9:00 a.m.
Morrill County:	Second and Fourth Tuesday at 2:00 p.m.
Sheridan County:	First and Third Tuesday at 2:00 p.m.
Sioux County:	Third Wednesday at 9:00 a.m.

E. **Domestic Relations Day.**

Box Butte County:	Fourth Wednesday at 9:30 a.m.
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F. **Exceptions.** The court will change any hour, day or date when legal holidays interfere or as may be required to expedite the administration of justice.

Adopted effective January 26, 1996; amended effective January 24, 2002.

RULE 12-11

Rules For Scotts Bluff County

A. **Case Assignments.**

(1) **Dockets Maintained.** The clerk shall prepare and maintain for use of each judge and the public, the following trial dockets:

Criminal All criminal cases instituted by indictment, information or complaint.

Domestic Cases for dissolution of marriage, legal separation, seeking or enforcing parental or spousal support, child custody or visitation, and paternity.

Appeal All cases brought by appeal or petition in error which involve review of the record made by an inferior tribunal.

Civil All other cases separately designated as to whether they are triable to a jury or without a jury.

(2) **Case Assignment to Judges.**

(a) **Initial Assignment.** A separate block of assignment cards for each docket category shall be maintained by the clerk, electronically at her option. Each block shall note the docket category, have an equal number of judges in each block, and be randomly shuffled and kept secret. Immediately after a case is filed, or upon request of a committing magistrate binding over a criminal case, the clerk shall draw the top card from the deck for the appropriate docket category and the case is thereupon assigned to the judge whose name is on that card. If the decks are not maintained electronically, the case number, date, and clerk's initials shall be placed upon the card and preserved chronologically. The judge's initials shall be placed upon the file jacket, the docket sheet, and the initial pleading.

(b) **Reopened Cases.** Any matter pertaining to a finished case shall be deemed assigned to the judge originally assigned the case.

(c) **Reassignment.** A judge may reassign a case to another district judge by order, and the clerk shall note such reassignment and date on the file jacket, docket sheet, and assignment card.

(d) **Interchange of Judges.** One district judge of this court may act with respect to a particular matter in a case assigned to another district judge of this court when necessary. Such interchange will be on individual matters only and will not effect a reassignment of responsibility for the case.

(e) **Calendaring.** Each judge shall provide for the conduct, calendaring, and progress of cases assigned to that judge.

B. **Trials.**

(1) **Jury Sessions.** There will be jury terms beginning on the first Monday of each month. Two judges will alternate months so that each judge is in a jury term every other month.

(2) **Scheduling Trials.** Any party may have a nonjury or jury case set for pretrial, trial, progression, or the like by filing a motion requesting it. The court may also schedule a case similarly without any motion.

(3) **Order of Jury Trials.** Cases will be placed on a list in the order that is set by the judge.

Adopted effective January 26, 1996; amended effective January 24, 2002.

RULE 12-12

Rules For Banner, Cheyenne, Deuel, Kimball and Garden Counties

A. Trials.

(1) **Trial Docket.** The trial docket will be called at times and places ordered by the District Judge.

(2) **Disposition of Untried Cases.** Unless otherwise ordered by the court, after a cause is at issue it shall be tried at the term of court then in progress or at the next succeeding term of court unless statutory grounds for a continuance exist. Upon failure to try the cause as herein provided, the court may, on its own motion or on motion of any party, dismiss the action or strike it from the docket. An action stricken from the docket may be restored upon motion and good cause shown.

Adopted effective January 26, 1996; amended effective January 24, 2002.